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## ART. IX. — HOW SHALL THE NATION REGAIN PROSPERITY?

## PART III.

*Our Navigation Laws: their Origin and Influence.*

THE truth of the following propositions may be assumed as thoroughly established: *First*, that the producing capacity of the United States, especially for its so-called manufactured products, owing to our great natural resources, and our wonderful utilization of brains and machinery, is far in excess of our utmost possible requirements for domestic consumption. Enlarged markets in foreign countries for the sale of our accumulated products are therefore the first national necessity of the hour; and until they are obtained, the people of the United States may be sure that there are no good times ahead, and no full and profitable employment for all their labor and capital. We shall continue, as now, "smothered in our own grease." This limitation of our foreign markets, existing in a degree that has absolutely no parallel in the modern history of civilized nations, is referable to various agencies, the first and foremost of which is the maintenance, on our part, of a fiscal (tariff) policy, which has obstructed or absolutely prevented reciprocal trade between the United States and *all* foreign nations, and which has sought to sell to the people of Chili, Buenos Ayres, Australia, Cape of Good Hope, and all other countries the very *largest* possible amount of the products of *our* labor and to buy in return the very *smallest* possible amount of the products of *their* labor. So long as such a policy is continued, any large and profitable foreign commerce for the United States is simply an impossibility.

But supposing, for example, as is undoubtedly the case, that the United States can now produce and sell cotton fabrics, agricultural implements, hardware of all descriptions, gunpowder, railroad supplies, boots and shoes, and many other commodities which the South American states want in large quantities, to greater advantage than can the countries of Europe; and supposing all obstacles

in the way of these states paying directly for what they may buy of us with their own special products — copper, wool, and the like — to be removed, so far as they can be, by a revision of our tariff, — something more would be requisite even then, in order that our trade and commerce may be fully developed and increased. The markets where the exchanges in question are to take place are not Boston, New York, and Baltimore, but Valparaiso, Buenos Ayres, and Rio Janeiro; and to reach these markets ships running regularly, speedily, and with the maximum of economy, are essential. And these ships, furthermore, must be steamers, for the transportation of valuable merchandise by sailing vessels for any considerable distances has become almost obsolete. But at present the United States, speaking comparatively, has neither ships nor steamers for this work. At present this country cannot boast of so much as even a single line running to the east coast of South America; while to the west coast we have but one, running bi-monthly from Boston to Valparaiso, established by a mercantile firm of the former city as a matter of experiment and for their own special trade convenience. On the other hand, Europe sends one steamer a day on the average to Brazil and the La Plata, and seven per month to the Pacific coast; England, as might be expected, taking the lead in this business, but France, Italy, Belgium, and Germany also actively participating. Any advantages over Europe which the United States may enjoy in respect to the cost of production of cotton fabrics and other commodities are, therefore, not only counterbalanced, but so much more than counterbalanced, by the advantages which Europe possesses over the United States in respect to facilities for transportation and the cost of freights to most of the South American markets, that the wonder is, not that our merchants and manufacturers export so little, but rather that under the circumstances they are able to export anything. If to-day it is desired to send goods expeditiously from the United States to Buenos Ayres, Montevideo, Rio Janeiro, or Pernambuco, the only way is to ship them first to England, and then reship them; and the freight from New York to Liverpool, with the commissions, expenses of reshipment, and insurance (at nearly double the rates charged in Europe), all constitute additions to the price of the American goods, from which the goods of the foreign manufacturers are exempt. To transport goods from New

York to the west coast of South America (Peru or Chili), from New York by steamer (*via* the Isthmus), is reported to cost \$ 44 per ton gold ; and from England, \$ 15 to \$ 20. From Europe, by rail, to the west coast the cost is reported at from \$ 3 to \$ 6, and from the United States at from \$ 10 to \$ 12. Cheap, therefore, in comparison with European products, as are many of our manufactured articles at the present time in the *home* market, the only thing an American manufacturing exporter can boast about them, when they reach a *foreign* market, is their quality, and not their price.

Under such a condition of affairs the question naturally arises, How is it that the United States, formerly a maritime power of the first class, has no ships or steamers that can now profitably compete for the carrying of even its own exports, not merely with the ships of our great commercial rival, England, but also with those of Italy, Sweden, Norway, and Germany ? How is it that the commercial tonnage of our nearest maritime neighbors, the British Provinces, as well as that of Great Britain, increases year by year, while the Secretary of the Treasury of the United States had nothing better to report to the nation in December, 1876, than a decrease of over thirty-one per cent in the tonnage of vessels built in this country in 1876, as compared with the returns of the preceding year, 1875 ? The answer is to be found in a variety of circumstances ; prominent, if not first among which, are our so-called "navigation laws," the nature and operation of which, to a majority of our citizens, are as much of a mystery as are the laws of the ancient Persians. Out of the three hundred and seventy-eight members of Congress, it is safe to assert that there are not fifty that can at once define the difference between a vessel "*enrolled*" and a vessel "*registered*"; and very few officials in the custom's service or Treasury Department that can at once tell correctly and in detail how to transfer the license of a merchant-ship or pleasure-yacht from one collection district of the United States to another.\* It is time, therefore, to say a word about these same navigation laws ; how

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\* It required some of the best legal talent in the city of New York during the past winter to effect this result in the case of a pleasure-yacht ; and the owner of the yacht, under date of June 4, 1877, writes that, although he has done his best, and incurred considerable expense and no end of trouble, to find out the law and comply with it, he is in daily expectation of a visit from the revenue officials of the United States, and a notification of a fine for some violation of the statutes.

they originated; what are their provisions, and something of their influence. And first about their origin.

When the convention that framed the Federal Constitution came together in 1789, there were two *sectional* questions of importance that came before it, and two only, — the question of slavery, and the regulation of commerce. The extreme Southern States wanted slavery and the slave-trade legalized and protected. The South, as a whole, also favored free trade. New England, on the other hand, largely interested in shipping, a not insignificant proportion of which, either directly or indirectly, was engaged in the slave-trade (her people, Massachusetts men especially, importing molasses from the West Indies, distilling it into rum, using the rum to buy slaves on the coast of Africa, and selling the slaves at the South), desired, through a system of navigation laws, to hold a monopoly of the commerce of the new nation; while the Middle States generally wanted neither slavery nor navigation laws. The sentiment of the country as a whole, at this period, was averse to slavery, and, the cultivation of cotton not having then been introduced to any considerable extent into the Southern States, or made the source of profit that it subsequently became through the invention of the cotton-gin, the antislavery feeling had developed itself much more strongly in some parts of the South than it had in New England.\* So that if New England had been as true to the great

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\* "The sentiment was common to Virginia, at least among the intelligent and educated, that slavery was cruel and unjust. The delegates from Virginia and Maryland, hostile to navigation laws, were still more warmly opposed to the African slave-trade. Delaware by her constitution, Virginia and Maryland by special laws, had prohibited the importation of slaves. North Carolina had shown a disposition to conform to the policy of her Northern sisters, by an act which denounced the further introduction of slaves into the State as 'highly impolitic.'" (Hildreth, Vol. III. pp. 508 - 510.) Pennsylvania founded a society for the abolition of slavery in 1775, with Franklin for its first president, and Rush its first secretary. New York had a similar society in 1785, with Jay as its first president and Hamilton as his successor? On the other hand, as some illustration of the then current New England sentiment, attention is asked to the following extract from an oration by Hon. David Daggett (afterwards United States Senator and Chief Justice of Connecticut), at New Haven, July 4, 1787, — a month before the Federal Convention, then in session, took up the subject of slavery and the navigation laws. The orator, after speaking of the gratitude and generous reward the country owed to the officers and soldiers of the late army, and its immediate inability to discharge such obligations, continued: —

"If, however, there is not a sufficiency of property in the country, I would project a plan to acquire it. . . . Let us repeal all the laws against the African slave-trade, and

principles of liberty as her people were always professing, it seems probable that, aided by the Middle States, and, in part by the South, she might have brought about an arrangement under the Federal Constitution, at the time of its formation, for the gradual, but no very remote extinction of American slavery, and an avoidance of the expenditure of blood and treasure which has since been entailed by its continuance. Selfishness and the love of the dollar, however, proved as omnipotent then as they ever have, and the result was a compromise of iniquity; the power to regulate commerce being inserted in the Constitution, together with, and as a consideration for, the extension by New England votes of the slave-trade until 1808, and the prohibition of export duties.\*

When Congress met, New England was not slow in demand-

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undertake the truly benevolent and humane merchandise, of importing negroes to christianize them. This has been practised by individuals among us, and they have found it a lucrative branch of business. Let us then make a national matter of it. . . . We should have the sublime satisfaction of enriching ourselves, and at the same time rendering happy thousands of those blacks, by instructing them in the ways of religion. . . . This would be no innovation. . . . This country permitted it for many years, among their other acts of justice; but their refusing to pay sacred and solemn obligations is not of so long standing."

\* This curious chapter in our national history, although familiar to historical students, has been all but unknown to the mass of the American people. The evidence of its truth is, however, complete. The subject of the slave-trade and the representation of slaves being before the Convention, Gouverneur Morris proposed that these matters, as well as the propositions relative to the navigation laws and taxes on exports, be referred to a committee; remarking, in connection, that "these things may form a bargain among the Northern and Southern States." The hint thus given was not thrown away. All these matters were referred to a committee; and what this committee did is thus told by Luther Martin, one of its members, in a letter to the speaker of the Maryland House of Delegates: "I found the Eastern States, notwithstanding their aversion to slavery, were very willing to indulge the Southern States at least with a temporary liberty to prosecute the slave-trade, provided the Southern States would, in turn, gratify them, by laying no restriction on [the enactment of] navigation acts; and after a little time the committee agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted." — ELLIOTT'S *Debates*, 2d ed., Vol. I. p. 373.

"Thus, by an understanding, or, as Gouverneur Morris called it, 'a bargain,' between the commercial representatives of the Northern States and the delegates of South Carolina and Georgia, and in spite of the opposition of Maryland and Virginia, the unrestricted power of Congress to enact navigation laws was conceded to the Northern merchants, and to the Carolina rice-planters, as an equivalent, twenty years continuance of the African slave-trade." — HILDRETH'S *United States*, Vol. III. p. 520.

ing the fulfilment of her part of this compact ; and in 1789, 1792, and subsequently in 1817, a system of navigation laws was enacted which were avowedly modelled on the very statutes of Great Britain which the Americans, as colonists, had found so oppressive that they constituted one prime cause of their rebellion against the mother country ;\* the main features of difference between the two systems being, that wherever it was possible to make the American laws more rigorous and arbitrary than the British model, the opportunity was not neglected. And these laws, without material change, hold their place to-day upon our national statute-book. International trade since their enactment has come to be carried on by entirely different methods. Ships are different, voyages are different, crews are different, men's habits of thought and methods of doing business are different ; but the old, mean, arbitrary laws, which the last century devised to shackle commerce, remain unchanged in the United States alone of all the nations ; and, what is most singular of all, it is claimed to be the part of wisdom and the evidence of patriotism to uphold and defend them. Their essential provisions are as follows : No American citizen is allowed to import a foreign-built vessel, in the sense of purchasing, acquiring a registry or title to, or of using her as his own property ; the only other absolute prohibi-

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\* The sentiment of the country in favor of restrictive navigation laws was much stronger in 1792 than it was at the time of the formation of the Federal Constitution. This was due to the exceedingly illiberal commercial policy which England, during the interval, had adopted towards the United States. At the close of the war Mr. Pitt, desirous of dealing liberally with the new nation, introduced into Parliament a bill allowing comparatively free commerce between the United States and the British West Indies ; but the measure, owing to the strong opposition of the British shipping interest, was not only defeated, but in 1788 an act was passed forbidding the importation of American produce into the West Indies, except in British vessels. And as some further indication of the then British jealousy of the commercial competition of the United States, it may be mentioned that Lord Sheffield, who headed the opposition to Mr. Pitt's bill, published in 1783 a book in which he advised the British government not to interfere too extensively with the Barbary pirates ; on the ground that, through lack of any sufficient naval force on the part of the United States to restrain and punish, — but which force Great Britain was known to possess, — the operations of the corsairs would be confined mainly to the destruction of American commerce, and of the little states of Italy, whereby British commerce would be benefited. Under such circumstances, and with a view simply of retaliating against Great Britain, the proposition to enact navigation laws received a degree of favor in the American Congress of 1792 which was wholly wanting in the Federal Convention of 1787.

tions of imports being in respect to counterfeit money and obscene objects.

No foreign-built vessel, or vessel in any part owned by a subject of a foreign power, can enter a port of the United States and then go to another domestic port with any *new* cargo, or with any part of her original cargo that has been once unladen, without having previously voyaged to and touched at some other port of some foreign country, under penalty of confiscation. By construction of this law, all direct traffic by sea between the Atlantic and Pacific ports of the United States *via* Cape Horn or the Cape of Good Hope, or across the Isthmus of Panama, is held to be of the nature of a coasting trade or voyage, in which foreign vessels cannot participate.

An American vessel once sold or transferred to a foreigner can never be bought back and again become American property.

An American vessel ceases to be such if owned in the smallest degree by any person naturalized in the United States who may, after acquiring such ownership, reside "for more than one year in the country in which he originated, or more than two years in any foreign country."

A foreigner may superintend an American factory, run an American railroad, be president of an American college, or hold a commission in the American army, but he cannot command or be an officer of a registered American vessel.

If a vessel of the United States becomes damaged on a foreign voyage, and is repaired in a foreign port, her owner or master must make entry of such repairs at a custom-house of the United States, as an import, and pay a duty on the same equal to one half the cost of the foreign work or material; and this law extends so far as to include boats that may be obtained at sea from a passing foreign vessel, in order to assure the safety of the crew or passengers of the American vessel.

A vessel under thirty tons cannot be used to import anything.

Goods, wares, and merchandise, the produce of countries east of the Cape of Good Hope, when imported from countries west of the Cape of Good Hope, are subject to a duty of ten per cent in addition to the duties imposed on such articles when imported directly. This law is interpreted so stringently that old second-hand gunny-bags do not lose their distinctiveness to an extent



sufficient to exempt them from additional duties if they finally come to the United States, in the process of using, from a place west of the Cape of Good Hope. A few years ago a vessel from China, destined to Montreal, Canada, was sent, on arriving, to New York, without breaking bulk. It was held that the voyage ceased in Canada, and that the new voyage to New York subjected the cargo to an additional ten per cent.\*

Foreign vessels, losing rudder, stern-post, or breaking shaft, and arriving in the United States in distress, cannot import others, to replace these articles here, without payment of the duty on the same. A foreign vessel cannot even land copper sheathing for the sole purpose of being recoppered by American workmen, without paying duties on the old copper stripped off and the new copper put on as separate and distinct imports.

If a Sunday school or a picnic party, out on an excursion, happen to come into an American port on a foreign (Canadian) vessel (as was recently the case on one of our upper lakes) for mere temporary and pleasure purposes, the vessel is liable to a tonnage tax; and a libel against the vessel instituted by an over-zealous official for its payment has been decided by the Treasury department (August, 1876) to be a proceeding which the government must enforce.

The following case, which happened in 1871, is a further illustration of the intolerance of the existing navigation laws of the United States. A citizen of Baltimore purchased a foreign-built vessel wrecked on the American coast and abandoned to the underwriters; and by spending a large sum in reconstruction, rendered her again seaworthy. He then, being desirous of employing his capital embodied in this instrumentality of trade in the most profitable manner, and assuming that the reconstructed wreck was his lawful property, arranged for an outward cargo, under the flag of the United States; but when the vessel was ready to sail, registry was refused by the custom's officials, on the ground that the vessel was

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\* By the original navigation laws (Act of 1790) it was provided that the tariff on all articles imported in American vessels shall be less than if imported in foreign vessels. On "Hyson" tea the duty in American vessels was twenty cents per pound, in foreign vessels forty-five cents. The present discriminating duties on products of countries east of the Cape of Good Hope, imported indirectly, are a remnant and legacy of these old restrictions.

of foreign construction, the sum of the repairs put on the wreck being a little less than three fourths of the original cost of the vessel; or, in other words, the substance of this decision, which was correct in law, was that, while the citizen under the laws of the United States might lawfully buy and acquire title to a wreck, and use it for any purpose other than navigation, he could not acquire title to it, and make it American property, lawful to use as a vessel, even after he had paid duties on its old materials as imports, unless he could show that he had expended upon the abandoned construction for the purpose of restoring it to its original quality for service, a sum nearly equivalent to the cost of building an entirely new vessel. The owner by law, most mercifully, in such cases, is not, however, deprived of the privilege of selling the property to a foreigner.

Every vessel belonging to the mercantile marine of the United States engaged in foreign trade (vessels employed in the fisheries excepted) must pay annually into the Federal treasury a tonnage tax, at the rate of thirty cents per ton. At the commencement of the war there were no tonnage taxes; but by the Act of July, 1862, a tonnage tax of ten cents per ton was imposed, which was afterwards increased to thirty cents, the present rate. Although there was nothing specific in the recent enactments to warrant it, the Treasury officials, interpreting the statute according to the invariable rule for the benefit of the government and to the disadvantage of the citizen, were in the habit, up to 1867, of collecting this tax at every entry of a vessel from a foreign port, but by the Act of March, 1867, tonnage taxes can now be levied but once a year. On a ship of one thousand tons, the present tax, amounting to \$ 300 per annum, represents the profits or interest (reckoned at six per cent) on an invested capital of \$ 5,000, and on a ship of two thousand tons of \$ 10,000. Hon. F. A. Pike of Maine, in a speech in the United States House of Representatives, May, 1868, stated that this tax was equivalent in many instances to three per cent on the market valuation of an inferior class of American vessels, employed only in the summer months and largely owned by his constituents.

In 1790, when the first tonnage tax was imposed, and the treasury of the new nation was sorely in need of revenue, the maximum rate for American vessels was six cents per ton.

Again, if any person not a citizen of the United States becomes

an owner, to the extent of the merest fraction, in an American ship, the tonnage taxes on such ship are immediately increased to sixty cents, or doubled; and the vessel at once ceases to be entitled to registry or enrolment as a vessel of the United States. Here, then, is a direct, odious, and stupid discrimination against the employment of foreign capital, provided it should so incline, for the developing of the American shipping interest, and the employment of labor even in our own dockyards and harbors. Supposing a similar law to be proposed, discriminating in like manner against the investment of foreign capital in American railroads, mines, factories, and mercantile enterprises generally, does any one doubt that the proponent would be at once hooted into contempt? And yet the hypothetical law is no more absurd than the law that actually exists upon the statute-book. It was, however, in respect to these same laws, that the Republican State Convention of Maine, in August, 1877, unanimously resolved, that, "*enacted in the infancy of the republic, they have proved their wisdom by long and varied experience. They embody the matured judgment of three generations of commercial men. Any radical change in these laws would be detrimental to the highest interests of American commerce, and a damaging blow to the national independence of the country.*" The question naturally suggests itself, Was there one single man in this same convention that had any clear and definite knowledge of how these laws originated, what they embody, and what is the sphere of their influence?

At the period of the enactment of our navigation laws, 1789, 1817, all other maritime nations had similar codes. But since then all maritime nations, except the United States, have either greatly modified the old-time restrictions which they once imposed on the building and use of vessels, or abolished them altogether. In this reform work Great Britain took the lead, at the very time (1849) when the competition of the United States with that nation, for the carrying trade of the world upon the high seas, was most severe, and when whatever of benefit could possibly accrue from restrictive navigation laws to Great Britain was especially likely to be manifested. But the majority of British legislators and people had come to realize, after an experience of near five centuries (the first British navigation acts dating back to 1381), that the general effect of such laws was injurious and not beneficial. There

was, furthermore, a more special stimulus acting on the British mind, at the period in question, in favor of a liberal maritime policy. Ships were then built exclusively of wood. The United States could build cheaper and better ships than England because the advantage in the material and skill for building was with us; and England, recognizing this fact, repealed all restrictions in the way of her subjects purchasing American ships, as a condition essential to enable them to meet American competition on the ocean on anything like equal terms. (How the United States failed in wisdom when the conditions were reversed, will be shown hereafter.) By act of Parliament, therefore, in 1849, all British navigation laws of a restrictive character, with the exception of such as pertained to the coasting-trade, were repealed; and in 1854 the British coasting-trade also was thrown open without restriction to the participation of all nations.\*

These measures, as was to be expected, encountered great opposition throughout the kingdom; and predictions were freely indulged in, by such men as Disraeli and Lord Brougham, that henceforth "free trade in shipping would destroy the ship-building trade in Great Britain, ruin British ship-owners, and drive British sailors into foreign vessels."† None of these anticipations and

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\* It is now well known that the reason why the coasting-trade of Great Britain was not made free in 1849, in connection with British foreign trade, was because of the unwillingness of the United States to make any reciprocal maritime concessions.

† Mr. Disraeli concluded a long attack upon the first bill repealing the British navigation laws in the following words, which would seem to have served as a model for nearly all the statesmen of the restrictive school in the United States from that time onward: "Will you, by the recollections of your past prosperity, by the memory of your still existing power, for the sake of the most magnificent colonial empire in the world, now drifting away amid the breakers, for the sake of the starving mechanics of Birmingham and Sheffield, by all the wrongs of a betrayed agriculture, by all the hopes of Ireland, will you not rather, by the vote we are now coming to, arrive at a decision which may to-morrow smooth the careworn countenance of British toil, give growth and energy to national labor, and at least afford hope to the tortured industry of a suffering people?" The appeal was, however, powerless, and the prophecy of doom never was fulfilled.

Lord Brougham also spoke of the laws that it was proposed to repeal, as having long been considered, "not only as the foundation of our glory and the bulwark of our strength, but the protection of our very existence as a nation." And after the repeal was carried, a prominent opponent of the measure is reported to have said that the next consistent thing for the House of Commons to do was to unite in singing "Yankee Doodle."

predictions were, however, realized. But, on the contrary, while the tonnage of the United Kingdom remained almost stationary from 1816 to 1840, increasing, during that period of twenty-four years, to the extent of only 80,118 tons, it began to increase immediately and coincidently with the removal of British protective duties in 1842; gaining 901,550 tons between 1842 and 1849, and after the repeal of the navigation laws in 1849, shooting up from 3,485,000 tons in 1849 to 5,328,000 tons in 1863 and 6,152,000 in 1875.

The business of building ships in the United States for ocean navigation began to increase about the year 1845, and culminated in 1855. After this latter year it declined with extraordinary rapidity. Nevertheless, at the period of the breaking out of the war in 1861, the tonnage of the United States engaged in the international carrying trade of the world was larger than that of all other nations combined, with the exception of Great Britain. The decline in American ship-building subsequently to 1855 was undoubtedly in a great degree owing to the substitution of steam for sails, and of iron for wood as a material for the construction of vessels; coupled with the advantages which Great Britain at that time possessed in the manufacture and working of iron. But it was just at this time, and under such circumstances, that our navigation laws proved most injurious to our commercial marine; for had it not been for the prohibitions which they imposed on American citizens from buying and acquiring titles to foreign-built ships, American merchants, following the example of the merchants of other countries, would have undoubtedly bought and used the best tools for their trade, no matter where made, and have thus maintained themselves on terms of equality with their British competitors. As it was, however, our laws reinforced in our people that sentiment of moral inertia which always tends to antagonize what is new, and strengthen the disposition to stick by what is old; and no substitutions for ships of the old pattern being made by the building at home, or the purchase from abroad, of ships of the improved type, the decay in the ocean tonnage of the United States, already commenced, continued without interruption. Then came the war, and the Confederate cruisers, which well-nigh drove the American mercantile marine from the ocean; and after the war the increased cost of all naval construction and all

domestic commodities, consequent upon the imposition of high taxes, national and State,\* and the use of bad money, alike prevented ships from being built and ship's cargoes of American merchandise from being profitably transported for sale to any foreign market, and under these several and in part continued influences the United States finds itself to-day without ships ready to do the work that through change in circumstances has to a certain extent become ready for the ships to do.

With this presentation of the causes of the decay of American commerce, or rather shipping, since 1855, the way is now clear for a consideration of the methods and feasibility of bringing back and profitably using ships of the most desirable character, as instrumentalities in the work of creating new markets for the surplus products of the industry of the United States.

DAVID A. WELLS.

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\* In 1869 Franklin W. Smith, treasurer of the then Atlantic Iron Works of Boston, presented to the Committee on Commerce of the United States House of Representatives a detailed statement, showing that the cost of an iron ship of one thousand tons' burden would at that time be increased, by reason of the taxes, and the premium on gold, to the extent of \$20,906 over and above the cost of a precisely similar vessel constructed in a British shipyard. On a wooden ship, of like tonnage, the increased expenditures at the same period, by reason of internal taxes and duties on imports, were estimated as between \$6,500 and \$7,000.